Supreme Court, U.S.
FILED
JUL 7 1977
MICHAEL RODAK, JR., CLERK

No. 76-1558

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

C. MARSHALL DANN, COMMISSIONER OF PATENTS AND TRADEMARKS, *Petitioner*,

v.

A. MICHAEL NOLL, *Respondent*

On Petition for a Writ of Certiorari to the United States Court of Customs and Patent Appeals

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MEMORANDUM OF RESPONDENT SUGGESTING THAT THE CAUSE IS MOOT

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Attorneys for Respondent

July 7, 1977

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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The respondent in the above-identified cause submits this memorandum to inform the Court of facts which, in respondent's view, render the cause moot.

The pertinent facts can be briefly stated. On February 5, 1970 patent application Serial No. 8,831, which is the subject of this case, was filed by A. Michael Noll in the United States Patent and Trademark Office seeking a patent including a number of "apparatus" and "method" claims, set forth in the application, on a raster scan computer graphics system. The Patent and Trademark Office allowed certain of the claims and rejected other claims, and the rejected claims were

appealed by the applicant to the Court of Customs and Patent Appeals. The CCPA determined that the rejection of the appealed claims should be reversed and the Patent and Trademark Commissioner filed the pending petition for certiorari to review the CCPA's decision.

Subsequent to the CCPA decision, there has been filed in the United States Patent and Trademark Office on July 5, 1977 a formal abandonment of the patent application. This document, a copy of which is attached to this memorandum, conforms to Rule 138 of the Rules of Practice in Patent Cases of the United States Patent and Trademark Office, which states, in part:

> EXPRESS ABANDONMENT. . . . an application may . . . be expressly abandoned by filing a written declaration of abandonment signed by the attorney or agent of record.

The filing of this abandonment terminates the efforts of the applicant to obtain a patent, precludes such a patent from issuing and thereby eliminates the subject matter in controversy. Since a controversy no longer exists, respondent submits that the cause is moot, the judgement below should be vacated, and that the case should be remanded to the United States Court of Customs and Patent Appeals with directions to dismiss the appeal to that court as moot. *Brenner* v. *Hofstetter*, 389 U.S. 5.

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APPENDIX

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

A. MICHAEL NOLL

Case: 6

Serial No.: 8,831

Group Art Unit: 237

Examiner: R. F. Chapuran

Title: Raster Scan Computer Graphics System

Filed: February 5, 1970

THE COMMISSIONER OF PATENTS AND TRADEMARKS,
WASHINGTON, D.C. 20231

Sir:

Express Abandonment Under Rule 138

In accordance with the provisions of Rule 138, this paper constitutes a written declaration of abandonment signed by an attorney of record for the purpose of expressly abandoning A. Michael Noll, Case 6, Serial No. 8,831, filed February 5, 1970.

Respectfully,

A. MICHAEL NOLL

/s/ By WILLIAM RYAN
William Ryan, Attorney
Reg. No. 24434

Bell Telephone Laboratories, Incorporated

Date: July 5, 1977